

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

NOTICE OF PROPOSED REGULATION

TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 6, ARTICLE 3, AMEND
SECTION 1160.2, AND ADOPT SECTIONS 1160.7 AND 1161.8

GENERAL HAZARDOUS MATERIALS REGULATIONS (CHP-R-15-06)

In compliance with the requirements of Title 49, United States Code (USC), Chapter 51, Section 5125, and Title 49, Code of Federal Regulations (CFR), Part 107, Subpart C, the California Highway Patrol (CHP) proposes to amend the state's hazardous materials regulations (HMR) to be consistent with national transportation requirements as required by federal law.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Title 13, California Code of Regulations (CCR), Division 2, Chapter 6, Article 3, Sections 1160 through 1167, contain the CHP's regulations governing the highway transportation of hazardous materials (HM). These sections contain the general provisions, hazard classification and shipping names, HM training, and the reporting of incidents involving HM or hazardous waste.

The proposed rulemaking action will make substantive changes to align state and federal HMR for persons subject to federal jurisdiction per Title 49, CFR, Part 171.1. Adopting the most recent edition of the federal HMR, incorporated by reference, in Title 13, CCR, Section 1160.2, ensures this alignment.

In order to further align the state and federal regulations, this action proposes the adoption of two additional sections. Title 13, CCR, Section 1160.7 is being added to address the federal requirements for HM registration and Title 13, CCR, Section 1161.8 is addressing the federal requirements for safety and security plans.

The following is a list of the specific changes being made:

Title 13, California Code of Regulations, Division 2, Chapter 6, Article 3, Section 1160.2, U.S. Department of Transportation Regulations

The state's HMR contained in Title 13, CCR, Sections 1160 through 1167, are required to be continuously evaluated and updated to avoid federal preemption. Title 49, USC, Section 5125, requires states to adopt HM laws and regulations which are "*substantively the same as*" the corresponding federal HM laws and regulations. In order for the CHP to fulfill the mandate established in Section 34501(b) of the California Vehicle Code, and be in compliance with federal law, it must align its HMR applicable to persons subject to federal jurisdiction pursuant

to Title 49, CFR, Part 171. This alignment will reflect the change from the October 1, 2013, to the October 1, 2014, printed edition of the federal HMR.

Title 13, California Code of Regulations, Division 2, Chapter 6, Article 3, Section 1160.7, Hazardous Materials Registration

The state's HMR contained in Title 13, CCR, are required to be continuously evaluated and updated to avoid federal preemption. Title 49, USC, Section 5125, requires states to adopt HM laws and regulations which are "*substantively the same as*" the corresponding federal HM laws and regulations. The proposed adoption of this section will meet the federal requirements applicable to HM registration.

Title 13, California Code of Regulations, Division 2, Chapter 6, Article 3, Section 1161.8, Safety and Security Plans

As previously explained, the proposed adoption of this section will meet the federal requirements applicable to safety and security plans.

Currently, the federal HM regulations apply to interstate and intrastate operations. Alignment of state and federal regulations will create consistency for industry by ensuring there is only one set of regulations needed for compliance. This rulemaking action will continue to provide nonmonetary benefits by protecting the health and safety of the public, employees, and environment by providing a regulatory authority for enforcement efforts as they relate to violations of the current hazardous materials regulations found in Title 49 CFR, which directly improves the safety of the motoring public. The CHP has evaluated the proposed regulations and has found the referenced regulations are the only regulations governing the highway transportation of HM. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing regulations.

DOCUMENT INCORPORATED BY REFERENCE

Title 49, CFR, Part 107, Parts 171 – 180 and Part 393 (October 1, 2014).

PUBLIC COMMENTS

Interested persons may submit written comments on these proposed actions via facsimile to (916) 322-3154, by electronic mail to cvsregs@chp.ca.gov, or by writing to:

California Highway Patrol
Enforcement and Planning Division
Commercial Vehicle Section
Attention: Officer Adam Roha
P.O. Box 942898
Sacramento, CA 94298-0001

Written comments will be accepted until 5:00PM, on October 26, 2015.

PUBLIC HEARINGS

No public hearing has been scheduled. If any person desires a public hearing, a written request must be received by the CHP, CVS, no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF INFORMATION

The CHP has available for public review an Initial Statement of Reasons for the proposed regulatory action, the information upon which this action is based (the rulemaking file), and the proposed regulation text. Requests to review or receive copies of this information should be directed to the CHP at the above address, by facsimile to (916) 322-3154, or by calling the CHP, CVS, at (916) 843-3400. All requests for information should include the following information: the title of the rulemaking package, the requester's name, proper mailing address (including city, state, and zip code), and a daytime telephone number in case the requester's information is incomplete or illegible.

The rulemaking file is available for inspection at CHP, CVS, 601 North 7th Street, Sacramento, CA 95811. Interested parties are advised to call for an appointment.

All documents regarding the proposed action are also available through the CHP's Web site at <https://www.chp.ca.gov/News-Alerts/Regulatory-Actions>.

CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations, or questions regarding the substance of the proposed regulations, should be directed to Officer Adam Roha or Sergeant Josh Clements (backup contact) CHP, CVS 601 N. 7th St., Sacramento, CA 95811 or by telephone at (916) 843-3400.

ADOPTION OF PROPOSED REGULATIONS

After consideration of public comments, the CHP may adopt the proposal substantially as set forth without further notice. If the proposal is modified prior to adoption and the change is not solely grammatical or nonsubstantive in nature, the full text of the resulting regulation, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption.

FISCAL AND ECONOMIC IMPACT

The CHP has made an initial determination that this proposed regulatory action: (1) will have

no affect on housing costs; (2) will impose no new mandate upon local agencies or school districts; (3) will involve no nondiscretionary cost or savings to any local agency, no cost to any local agency or school district for which Sections 17500-17630 of the Government Code (GC) require reimbursement, no cost or savings to any state agency, nor costs or savings in federal funding to the state; (4) will neither create or eliminate jobs in the state of California, nor result in the elimination of existing businesses, nor create or expand businesses in the state of California; (5) will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states; (6) benefits of the regulation: will continue to provide a nonmonetary benefit to the protection and safety of public health, employees, and safety to the environment by providing a regulatory authority for enforcement efforts as they relate to violations of the current hazardous materials regulations found in Title 49 CFR; and (7) will continue to provide a nonmonetary benefit to the protection and safety of public health, employees, and safety to the environment by providing a regulatory authority for enforcement efforts as they relate to violations of the current HMR found in Title 49, CFR. The regulated community is encouraged to respond during the comment period of this regulatory process if significant impacts are identified.

COST IMPACTS ON PRIVATE PERSONS OR BUSINESSES

The CHP is not aware of any cost impacts that a private person or business would incur while maintaining compliance with the proposed action.

EFFECT ON SMALL BUSINESSES

The CHP has not identified any significant adverse effect on small businesses. The proposed regulations do not increase any requirements upon any small businesses. Businesses subject to federal jurisdiction are currently required to comply with the federal HMR, and therefore, the mere adoption of regulations to avoid preemption or to grant enforcement authority of preexisting regulations provides no additional impact on businesses. The proposed regulatory amendment in Title 13, CCR, Section 1160.2, and adoption of Sections 1160.7 and 1161.8 are already applicable and enforceable on businesses subject to federal jurisdiction pursuant to Title 49, CFR, Part 171.

The federal HMR being adopted by reference in Title 13, CCR, were subjected to the procedures under the Federal Administrative Procedures Act (FAPA). The FAPA provided regulated businesses the opportunity to participate in the rulemaking process, prior to adopting the current federal HMR.

ALTERNATIVES

In accordance with Section 11346.5(a)(13) GC, the CHP must determine that no reasonable alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed. The CHP must also consider if an alternative method would be as effective as and less burdensome to affected private persons than the proposed action, or would

be more cost-effective to private persons and equally effective in implementing the statutory policy or another provision of law. The CHP invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AUTHORITY

This regulatory action is being taken pursuant to Sections 2402.7 and 34501(b) CVC.

REFERENCE

This action implements, interprets, and/or makes specific Sections 2402.7, 27903, 34510, 34506, and 34501(b) CVC.

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
R. W. MAYNARD, Chief
Enforcement and Planning Division